Dobbs International Services, Inc. *and* United Food and Commercial Workers International Union, Local 100-A and International Brotherhood of Teamsters, Local 705, Joint Petitioners. Case 13–RC–19625

June 30, 1997

ORDER DENYING REVIEW

BY CHAIRMAN GOULD AND MEMBERS FOX AND HIGGINS

The National Labor Relations Board has considered Intervenor Chicago Truck Drivers, Helpers and Warehouse Workers Union's request for review of the Regional Director's Decision and Direction of Election (pertinent portions of which are attached).[1] The request for review is denied as it raises no substantial issues warranting review. The Intervenor's request for a stay of the election is also denied.

CHAIRMAN GOULD, dissenting.

Contrary to my colleagues, I would grant the Intervenor's request for review and stay the election. In my view, the Board should reconsider its contract bar rule in light of recent trends in the duration of contracts. A 1995 Bureau of National Affairs survey of contract duration indicates that the percentage of contracts with a duration of 4 years or more has increased from 9 percent in 1989, to 21 percent in 1992, and to 30 percent in 1995.[1] Statistics from the Bureau of Labor Statistics confirm this trend. In 1995, 36.5 percent of contracts[2] had a duration greater than 3 years up from 17.2 percent in 1987.[3] In specific industries the percentage of contracts with a duration of more than 4 years is even greater: paper (86 percent), printing (75 percent), maritime (63 percent), lumber (57 percent), and fabricated metals (53 percent).[4] At the same time, the percentage of contracts with 3-year terms is down to 64 percent from 74 percent in 1992 and 80 percent in 1989.[5] Because of this trend toward longer contracts, I would consider extending the contract bar period.

My judgment is that the Board should only make a determination about the propriety of a new contract bar rule or whether the existing rule should be retained subsequent to the submission of briefs by amici. Amongst the issues to be considered by amici, and ultimately the Board, would be whether industry standards should be devised in light of different trends throughout the economy. The practicality of such an approach should be assessed by amici and the Board.[6] The record in the instant case does not provide us with a basis for arriving at judgments on these issues.

Although I recognize that any extension imposes a restriction on employee freedom of choice, I believe that, in the interests of industrial stability, the Board should reexamine its current policy with respect to the duration of contracts as bars to petitions based on the relevant economic considerations, different practices within different industries, and briefs and memorandum from labor and management representatives and amici. Accordingly, I would grant review.

[1] The only issues on review are the Intervenor's contentions that the Board should extend the period in which a contract acts as a bar from 3 to 4 years, that the petition filed here should be dated from the time it was amended, and not from the original filing date, and that Teamsters Local 705 should not be permitted to participate in the election.

[1] Basic Patterns in Union Contracts 1995, 14th Edition, Bureau of National Affairs.

[2] These statistics refer to contracts covering 1000 or more employees.

[3] "*Major Collective Bargaining Settlements in Private Industry*," BLS Press Releases 1987–1995.

[4] Basic Patterns in Union Contracts 1995, supra.

[5] Id.

[6] In *Pacific Coast Assn. of Pulp and Paper*, 121 NLRB 990 (1958), the Board identified some of the problems with a contract bar rule based on industry, namely, the uncertainty as to when representation petitions could be filed and the difficulty in the selection of a method of classifying industries and a criterion for assigning a particular employer, plant, or operation to a particular industry.

APPENDIX

REGIONAL DIRECTOR'S DECISION AND DIRECTION OF ELECTION

The Intervenor takes the position that the Board should extend its contract bar policy from its present 3-year period to 4 years, and, thus, its collective-bargaining agreement with the Employer, effective from June 18, 1994, through June 30, 1998, should be a bar to the processing of the instant petition. The Intervenor further contends that the controlling date for the filing of the petition should be the first amended petition, which the Petitioner contends was untimely filed during the insulated period of the Board's contract bar policy. Lastly, the Intervenor contends that International Brotherhood of Teamsters, Local 705, AFL–CIO (Local 705) should be dismissed from the proceedings as it was added as a joint petitioner to the petition by the first amended petition filed during the insulated period. The Joint Petitioners take the position that the Board should not change its contract bar policy and that the initial petition's timely filing date is controlling herein.

The original petition in this proceeding was filed by United Food and Commercial Workers International Union, Local 100-A (Local 100-A) on April 17, 1997, 61 days prior to the third anniversary date of the collective-bargaining agreement between the Employer and the Intervenor. The petition as filed sought a unit described as follows:

> [Included] All production, maintenance and drivers employed by employer at all catering service operations which the employer owns or operates at O'Hare International Airport and Midway Airport.

[Excluded] All office and clerical employees, professional, technical and administrative employees, supervisors, watchmen and guards.

Thereafter, on May 1, 1997, a first amended petition was filed by Local 100-A, naming Local 705 as a Joint Petitioner and describing the unit sought as follows:

[Included] All drivers employed by the Employer at all catering service operations which the Employer owns or operates at O'Hare International Airport.
[Excluded] All office and clerical employees, professional, technical and administrative employees; supervisors; watch men and guards.

At the hearing, the Intervenor presented the testimony of a field representative who testified that approximately 30 percent of the contracts that he services are of a duration longer than 3 years. The business representative also testified that, in his opinion, contracts longer than 3 years in duration lend greater stability in labor relations and reduce the costs of negotiations for the parties involved. The Intervenor also attached to its brief excerpts from the Daily Labor Report dated January 30, 1997, showing that 63 percent of the 1996 collective-bargaining agreements surveyed were for a duration of 3 years or less and 37 percent of the agreements were for a duration greater than 3 years.

Analysis

Under the Board's current contract bar policy, a contract will only serve as a bar to a stranger petition for a period of 3 years. *General Cable Corp.*, 139 NLRB 1123, 1125 (1962). A contract whose duration is longer than 3 years is treated, for contract bar purposes, as though it was a contract of 3 years' duration. Thus, regardless of a contract's length in excess of 3 years, a petition may be filed during the 90- to 60-day open period prior to the third anniversary date of the contract, and after the third year anniversary date of the contract if no new agreement is made during 60-day insulated period prior to the third year anniversary of the contract; see, *Deluxe Metal Furniture Co.*, 121 NLRB 995, 1000–1001 (1958), and *General Cable Corp.*, supra at 1125.

Herein it is clear, and the Intervenor concedes, that the original petition filed by Local 100-A was timely under the Board's current contract bar policy, being filed during the 90- to 60-day open period prior to the third year anniversary date of the collective-bargaining agreement between the Intervenor and the Employer. The amended petition, however, was filed during the 60-day insulated period prior to the third year anniversary of the contract. The Intervenor, at the hearing and in its motion to dismiss the petition, contends that the amended petition materially differs from the initial petition and, therefore, the petition's filing date should be dated from the filing of the first amended petition rather than the filing date of the original petition.

In *Deluxe Metal Furniture Co.*, supra, the Board stated the general rule is that the filing date of the original petition rather than any subsequent amendment is the controlling date, "if the employers and the operations or employees involved were contemplated by or identified with reasonable accuracy in the original petition, or the amendment does not substantially enlarge the character or size of the unit or the number of employees covered." Id. at fn. 12. An example of an exception to the general rule is an amendment which seeks to expand a craft unit to a much larger production and maintenance unit; see *Hyster Co.*, 72 NLRB 937 (1947).

Here, the first amended petition differs from the original petition by adding Local 705 as a joint petitioner and eliminating the location of "Midway Airport" and the words "production" and "maintenance" from the inclusion language of the unit description. It is my opinion that none of the limited exceptions to the general rule are applicable herein, and, therefore, the date of the original petition is controlling.

First, the original petition appropriately identified the Employer involved. Second, both the initial petition and the amended petition clearly identify and encompass the drivers (customer service representatives), the only classification of employees covered by the collective-bargaining agreement which the Intervenor asserts as a bar. While the record is unclear or ambiguous as to whether the changes to the unit description by the amended petition narrowed the unit sought or merely conformed the description of the unit to reflect more accurately the unit Local 100-A sought in the original petition, it is clear that the amended unit description does not enlarge the character or size of the unit or the number of employees covered.[1] Accordingly, I find no basis on the changes to the wording of unit description to depart from the general rule that the filing date of the original petition is controlling.

With regard to the amended petition's addition of Local 705 as a joint petitioner, the Intervenor asserts Local 705 is the real petitioner in this matter, and it is attempting to bootstrap "itself onto a friendly union's petition" to do that which it could not do during the insulated period—file its own petition. Thus, the Intervenor contends that, since Local 705 is the "real" petitioner, the controlling date for the filing of the petition should be the first amended petition. The Intervenor's argument is based on its own assumptions as to Local 100-A's and Local 705's motives and is not supported by the record. There is no record evidence that shows or suggests that Local 100-A and Local 705 are not joint petitioners or that they do not intend to jointly represent the unit if they are certified as the result of a Board-conducted election. In the absence of any supporting evidence, I cannot find that the filing date of the first amended petition should be the controlling date for contract bar purposes. Furthermore, I find no basis for using the filing date of the first amended

[1] The record does indicate that the Employer has production and maintenance employees who are represented by Hotel Employees, Restaurant Employees Local 1. The first amended petition clarifies that these employees are not sought by the Joint Petitioners herein. The Intervenor contends that the amended petition, thus, narrows the unit and excludes employees originally sought. Local 100-A, in its brief, contends that it never sought to represent the production and maintenance employees represented by Hotel Employees, Restaurant Employees Local 1. Rather, Local 100-A asserts that the "Midway Airport" location and words "production" and "maintenance" were inserted into its original petition because of the contract between the Intervenor and the Employer that contains a reference to the Employer's Midway Airport operations and the lack of description of the employees covered by the contract. The record does not contain sufficient evidence to resolve which contention is correct, however, it is unnecessary to do so as neither contention is dispositive of the issues presented herein.

petition as the controlling date for contract bar purposes solely on the basis that the amendment adds a joint petitioner to the original petitioner. To conclude otherwise would serve none of the purposes underlying the contract bar policy. Thus, where there is a timely filed petition during the open period of a contract, the parties to a collective-bargaining agreement are given appropriate and timely notice that a question of representation has been raised prior to the expiration of the contract, and, if no petition is timely filed, the parties to the contract have an uninterrupted 60 days to negotiate for a new one. The addition of a joint petitioner to a timely filed petition disturbs neither aspect of these policies. It does not change the timely and appropriate notice of a representation issue to the contracting parties, nor does it disturb the insulated period.

Based on the foregoing and the entire record here, I find that the controlling date for the filing of the petition here is the filing date of the original petition, and that it was timely filed under the Board's contract bar policy.

The Intervenor urges that the Board's contract bar policy be extended to 4 years and, under a 4-year contract bar policy that its contract is a bar to the instant petition. In support of its position, the Intervenor argues that a 4-year contract bar policy would ensure greater stability in labor relations, while maintaining employee freedom of choice and to accommodate a trend towards 4-year contracts.

In extending the contract bar doctrine from 2 to 3 years in *General Cable Corp.*, the Board emphasized, among other factors, the unified stand of both labor and management, recent developments in the labor movement and labor law, economic developments, the international setting, technological changes, and statistics from the United States Department of Labor showed that the majority of contracts were of a longer duration than the 2-year contract bar policy in effect at that time. In the instant case, the Intervenor urges the Region to extend the contract bar doctrine by 1 year on the basis of one paragraph in the Daily Labor Report dated January 30, 1997, and the testimony of one witness which, at best, shows that a majority of collective-bargaining agreements are still of a duration for 3 years or less, unlike the situation the Board faced when it extended the contract bar period in *General Cable Corp.* This is insufficient record evidence to support the extension of well-established Board precedent. Furthermore, the Board in *General Cable Corp.* specifically stated, "if, as some have urged, we were at present to cause further delay by expanding the bar period to more than 3 years, stability of industrial relations would in our judgment be so heavily weighted against employee freedom of choice as to create an inequitable imbalance." *General Cable Corp.*, supra at 1125. In short, the record does not justify the extension of the contract bar doctrine to 4 years. Further, that is a decision that only the Board can make.

In sum, I find that there is no contract bar to processing the instant petition.